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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,654	09/02/2003	George Smeja	78123 (7549)	3421
22242	7590	11/30/2004	EXAMINER	
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			BALSIS, SHAY L	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/653,654

Applicant(s)

SMEJA ET AL.

Examiner

Shay L Balsis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-21 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-15 and 22-30 is/are rejected.
- 7) ☒ Claim(s) 3, 4 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 15aq on figure 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the push button" in line 4. There is insufficient antecedent basis for this limitation in the claim. Examiner believes that claim 6 is supposed to be dependent from either claim 3 or claim 4.

Claim 21 recites the limitation of “turning portions on the body for cooperation with the handle device to turn the body relative to the handle device” in lines 9-11. The turning portions are being used with reference to the handle device however the handle device is not positively claimed in claim 21. Therefore the turning portions do not have to be used for turning the body with respect to a handle device.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5, 7-9, 11, 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Fredrick (USPN 1245697).

Fredrick teaches a tool device for a detachable working tool. The tool device comprises a body (11) and a releasable retention device (12). There is a turning mechanism (8) in the body for allowing the tool to be repositioned relative to the body to change an angle of attack. An actuator (10) is movable on the body to a first position to allow repositioning of the tool and movable to a second position to actuate the releasable retention device. Pressure is first applied to the actuator to allow the body to rotate changing the angle of attack of the tool. Once greater pressure is applied the actuator causes the retention device to become dislocated from the tool thereby releasing the tool from the tool device with having a person having to touch the tool.

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The tool has a flat planar surface with multiple edges. When clamping the tool to the device the device is pushed down over the tool to allow the retention device on the tool device to clamp to the tool. The tool comprises a post (6) that projects upward and receives the retention device. The body has an outwardly projecting handle portion to be gripped by the user or to be attached to an extension handle. In use, the tool can be adjusted by moving an actuator to a first position. When the actuator is moved to a second position the tool can be removed completely from the device without having to touch the tool.

Claims 1, 5, 10, 11, 22, 24-27, 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Bray (USPN 3434175).

Bray teaches a tool device for a detachable working tool. The tool device comprises a body (14) and a releasable retention device (22). There is a turning mechanism (20) in the body for allowing the tool to be repositioned relative to the body to change an angle of attack. An actuator (20) is movable on the body to a first position to allow repositioning of the tool and movable to a second position to actuate the releasable retention device. The actuator is loosened to tool to rotate changing the angle of attack of the tool. The actuator is removed from the body, which causes the retention device to become dislocated from the tool thereby releasing the tool from the tool device with having a person having to touch the tool. The tool, made from metal, has a flat planar surface with multiple edges serrated edges of different sizes or spacing. There are teeth (26) for cooperation with the handle device to turn the blade tool. The body has an outwardly projecting handle portion (10) to be gripped by a palm of a user or to be attached to an extension handle. In use, the tool can be adjusted by moving an actuator to a first position.

When the actuator is moved to a second position the tool can be removed completely from the device without having to touch the tool.

Claims 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Trenz et al. (USPN 6745427).

Trenz teaches a tool device with a tool having a connecting portion. The tool device comprises a hollow body (6) and a retention member located in the hollow body (not labeled but best shown on figure 3). The retention member is spring biased to retain the tool on the device. A shoulder portion of the retention member is biased by the spring to engage the connection portion on the tool. An actuator (4) shifts the retention member to a release position shifting the shoulder portion from it retaining position to release to the tool. There are eject cam portions on the retention member to eject the tool and also turning cam portions to turn the cam.

Claims 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Egolf et al. (USPN 6094771).

Egolf teaches a tool device with a tool having a connecting portion. The tool device comprises a hollow body (1) and a retention member located in the hollow body (22, 23). The retention member is spring biased (20, 21) to retain the tool on the device. A shoulder portion of the retention member is biased by the spring to engage the connection portion on the tool. An actuator (14) shifts the retention member to a release position shifting the shoulder portion from it retaining position to release to the tool. There are eject cam portions on the retention member to eject the tool and also turning cam portions to turn the cam. The retention member has an enlarged opening to allow insertion of an enlarged head (2) on the tool. A wall portion of the

enlarged opening retains the tool head and a stationary receiving portion on the tool device to receive the enlarged head when the tool is attached.

Claims 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams (USPN 2666224).

Adams teaches a tool device with a tool having a connecting portion. The tool device comprises a hollow body (12) and a retention member located in the hollow body (14, 20). The retention member is spring biased (18) to retain the tool on the device. A shoulder portion of the retention member is biased by the spring to engage the connection portion on the tool. An actuator (16) shifts the retention member to a release position shifting the shoulder portion from it retaining position to release to the tool. There are eject cam portions on the retention member to eject the tool and also turning cam portions to turn the cam. The retention member has an enlarged opening to allow insertion of an enlarged head (28) on the tool. A wall portion of the enlarged opening retains the tool head and a stationary receiving portion on the tool device to receive the enlarged head when the tool is attached.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bray (USPN 3434175).

Bray discloses the claimed invention except for the blade being made from a plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the blade plastic, since it has been held within the general skill of a worker in the art to select a know material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416.

***Allowable Subject Matter***

Claims 3-4 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 16-21 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: Claims 3, 6, 16 and 31 all include the limitation of a push button actuator. The push button actuator is capable of being pushed with light pressure to turn the tool and when applied with greater pressure the tool is released from the device. The prior art of Frederick and Bray all teach actuators however the references fail to teach that the actuators are push buttons. Keegan et al. (USPN 5467498) teaches a push button actuator to turn the blade however the reference fails to teach releasing the blade when the push button is fully depressed. In order to release the



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blade of Keegan, the screw (12) must be removed. None of the references teach the claimed limitation nor would it have been obvious to combine references to achieve the claimed invention.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Slb  
11/18/04

  
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